

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

HEATHER MAY THOMAS on behalf of
CRISTYN JEANETTE SMITH-THOMAS,

Plaintiff,

v.

No. 1:24-cv-00298-WJ-KRS

ALMA C. ROBERSON,
GEOFFREY CUMMINGS,
WILLIAM P. JOHNSON,
MITCHELL ELFERS and
ALBUQUERQUE SWAT,

Defendants.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

This case apparently arises from the arrest and detention of Cristyn Jeanette Smith-Thomas by Albuquerque Police officers. *See* Civil Rights Complaint Pursuant to 42 U.S.C. § 1983, Doc. 1, filed March 26, 2024 (“Complaint”).

United States Magistrate Judge Kevin R. Sweazea stated:

It appears that Heather Mae Thomas is bringing this case on behalf of her daughter, Cristyn Jeanette Smith-Thomas. Heather Mae Thomas signed the “Declaration Under Penalty of Perjury” stating she “is the plaintiff in the above action, that [s]he has read the above complaint and that the information contained therein is true and correct” and personally delivered the Complaint to the Clerk’s Office for filing. Complaint at 6. The Complaint also states: “I have audio recording of the officers trying to come in. We were told if she just comes out to talk, there would be no problems. That’s when they assaulted & kidnapped my little girl.” Complaint at 3.

Heather Mae Thomas is not a licensed attorney authorized to practice in this Court and, therefore, cannot bring claims on behalf her daughter. *See Fymbo v. State Farm Fire & Cas. Co.*, 213 F.3d 1320, 1321 (10th Cir. 2000) (“A litigant may bring his own claims to federal court without counsel, but not the claims of others”).

Order to Show Cause at 1-2, Doc. 5, filed March 27, 2024. Judge Sweazea ordered Heather Mae Thomas to show cause why the Court should not dismiss this case because Heather Mae Thomas cannot bring claims on behalf of Cristyn Jeanette Smith-Thomas. *See* Order to Show Cause at 2.

Heather Mae Thomas filed a Response to Judge Sweazea's Order to Show Cause which states:

Durable Power of Attorney – Filed
27 CFR 72.11¹ All crimes are commercial
conditional acceptance upon providing a witness to an injured party
6th Amendment Reserved.


[sic] Response to Order to Show Cause at 1, Doc. 6, filed March 28, 2024. Heather Mae Thomas attached to the Response a “Durable Power of Attorney” in which “Cristyn Smith” appoints “Heather Thomas” as her “attorney-in-fact.” Response at 2.

Heather Mae Thomas has not shown cause why the Court should not dismiss this case. Judge Sweazea quoted *Fymbo v. State Farm Fire & Cas. Co.*, 213 F.3d 1320, 1321 (10th Cir. 2000), which states "A litigant may bring his own claims to federal court without counsel, but not the claims of others." Heather Mae Thomas has not cited any legal authority that shows that her daughter's Durable Power of Attorney renders *Fymbo* inapplicable to this case or that would allow the Court to disregard *Fymbo*. *See United States v. Spedalieri*, 910 F.3d 707, 709 n.2 (10th Cir. 1990) (“A district court must follow the precedent of this circuit”).

The Court dismisses this case because Heather Mae Thomas has not shown that she can assert claims in this Court on behalf of her daughter.

IT IS ORDERED that this case is **DISMISSED without prejudice**.

¹ 27 C.F.R. § 72.11 is a Bureau of Alcohol, Tobacco, and Firearms regulation that defines various terms including “Commercial crimes.”



WILLIAM P. JOHNSON
CHIEF UNITED STATES DISTRICT JUDGE